

Application No.: 09/760,377**Atty Docket: BLFR 1003-1****REMARKS**

Claims 1-95 are currently pending in this application. The Examiner has rejected claims 1-38 and 58-95 under 35 U.S.C. § 102(e) as being anticipated by Landvater (U.S. 6,609,101). Claims 39-57 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101).

Applicant cancel claims 77-95 in this amendment, leaving claims 1-76 for examination.

Interview Summary

Applicants appreciate Examiner Van Doren's courtesy of conducting an interview on Wednesday, 5 October 2005. Prior to the interview, we submitted a proposed agenda, the substance of which is reproduced below:

"The spirit of this interview is to advance the case towards allowance. Applicants responded on 27 July 2005 to the most recent office action. Applicants are prepared to offer amendments after discussion of the current response to the office action, if necessary.

Issues for the interview include:

1. The significance of limitations specifying integration of a causal calendar with particularly claimed retail management analysis and reporting.
2. Whether the Examiner has identified any additional references to combine with Landvater.
3. Any amendments that would allow the claims to proceed to allowance."

During the interview, the Examiner asked what a causal calendar does and we responded that it keeps track of events that impact demand for goods.

The Examiner suggested amending the second element to tie the elements together, so that it would be clear how the causal calendar in the first element impacted the analysis programs in the second element. After the interview, we identified language in the preamble that makes this connection between the elements.

The Examiner asked whether this was meant to be a Jepson claim and we responded yes.

Rejection Under 35 U.S.C. § 102(e) of Claim 20 (Open to Buy Reports)

The Examiner rejects **claim 20 (Open to Buy Reports)** under 35 U.S.C. § 102(e) as anticipated by Landvater (U.S. 6,609,101). Claim 20 includes the limitations:

Application No.: 09/760,377

Atty Docket: BLFR 1003-1

a causal calendar of events impacting demand utilized by the forecasting program to generate the output, said causal calendar including for a plurality of events attributes of a good identifier, a location identifier, the event start date, the event stop date, and the event type; and

an additional analysis programs in the set of analysis programs generating data reported in open to buy reports.

These limitations are not found in Landvater.

In our discussion of claim 20, we repeat our position for context, then summarize the Examiner's argument and respond.

Claim amendment

Please note that the claim has been amended and clarified to specify, as would be understood by one of ordinary skill who has read the specification, that the causal calendar tracks events that impact demand for goods. The resulting wording is "a causal calendar of events impacting demand".

The causal calendar of events impacting demand in the first element is clearly tied to the additional analysis programs through the preamble. The forecasting programs generate *the* output; the preamble specifies that the analysis programs "utiliz[e] the output" of the forecasting program. This passage of the preamble ties together the first and second elements.

Causal calendar data tuple

Our position has been that Landvater lacks a causal calendar, although it tracks promotion start dates. See, cols. 17-18. Landvater's promotion start date tracking is not a general causal calendar adapted as claimed to a variety of event types. There is **no teaching** to include an event type when tracking promotions; Landvater teaches logic triggered by a binary condition of promotion start date or not:

FIG. 19 depicts alternate logic to that represented in steps 227 and 228 in FIG. 13b which is used for calculating the initial distribution of products to a retail store 23 **for the first day of a promotion**. ... The initial distribution logic is not used for non-promotional forecasts, and it is **not used for** promotional forecasts in **day 2 [two], through the end of the promotion**.

Col. 17, lines 18-31. Essentially, Landvater uses the first day to trigger an initial distribution safety time so that goods arrive with an extra margin of time before a promotion. Col. 17, lines 32-57. Landvater's algorithm includes additional steps, such as a check for override percentages (col. 18, lines 3-20), but there is no specification of a calendar having the claimed elements.

Application No.: 09/760,377**Atty Docket:** BLFR 1003-1

For lack of a causal calendar with the elements claimed, including an event type for handling of multiple types of causal events, Landvater cannot meet the Examiner's burden for showing anticipation.

The Examiner argues (OA 2 § 2) that "Since a causal calendar is a schedule of events involving or constituting the producer of an effect, result or consequence in its broadest reasonable interpretation, Examiner asserts that Landvater does teach a causal calendar when discussing the schedule of replenishment shipments based on time-based and scheduled product sales forecasts. The schedule involving shipments and replenishments is directly correlated to events like shelf configuration changes, sales, etc." Then the Examiner cites passages of columns 8, 14-15, 17, 19 and 21, without specifically connecting any of the passages to the words of the claim.

To respond, we address the Examiner's argument generally, then address each of the passages cited. The words of the claim, as amended, define causal calendar with specificity: *"a causal calendar of events impacting demand utilized by the forecasting program ... said causal calendar including for a plurality of events attributes of a good identifier, a location identifier, the event start date, the event stop date, and the event type"*. These words are read in the context of the specification, as one of ordinary skill in the art would understand them having read the specification. MPEP, § 2111, at 2100-47 (Rev. 3, August 2005). The relevant discussion of the tuple that defines a causal calendar is found in the application at 3-6, where events impact demand. The schedule of replenishment to which the Examiner refers addresses supply, not demand.

The Examiner's argument does not address an event type and does not point to a calendar that includes the claimed tuple. Arguing, as the Examiner does (OA 2), that the "schedule involving shipments and replenishments is directly correlated to events like shelf configuration changes, sales, etc." does not teach the causal calendar with the claimed tuple of attributes. The schedule of shipment events is not a calendar of events impacting demand.

Among the passages cited, col. 8, lines 25-40 discusses the interface between a forecasting system and a replenishment system. We assume that the Examiner is relying on the words, "The differences between what is projected to be sold and what is

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

projected to be shipped include: ... the number of days or weeks of supply that should be delivered at one time to prevent an excess number of small deliveries and *projected changes to the arrangement of products on the store shelf.*" (Italics added) This passage does not teach or suggest the claimed causal calendar tuple of events impacting demand. Use of the claimed tuple is not inherent, in the sense of necessarily being implied as the only way for Landvater's system to operate.

The passage at columns 14-15 is longer. It discusses the advantages of weekly planning, after an initial critical period during which daily planning is necessary for accuracy. This discussion has nothing to do with a causal calendar. We assume that the Examiner is relying on the discussion at column 13, lines 60-66 regarding data arrays, which says, "[R]eading a series of rows from the database 36 and then loading the rows into arrays in transient memory 34. These arrays include forecast, in-transit, planned replenishment and shelf change information for a product with respect to which projected replenishment shipments are to be generated." Fortunately, this passage is detailed enough to make it clear that the data structures used by Landvater do not match the claimed tuples of a causal calendar.

The passage from column 17 lines 35-60 explains a feature that allows planners or analysts to fudge the system operation, "to tailor the system to their unique promotional needs." Col. 17, lines 48-49. Instead of having a causal calendar, from which adjustments can be calculated automatically, Landvater suggests manually manipulating data by setting a system-wide initial distribution safety time, category-specific initial distribution safety times, or even product/location overrides for initial distribution safety times. Instead of having the elegant causal calendar that we claim, Landvater uses a very different way for a user to tediously set overrides. This passage makes it clear that Landvater could make good use of the claimed causal calendar, to overcome glaring deficiencies in what he teaches.

The passage from column 19 elaborates on circumstances in which override promotion safety times would be set. Again, manually setting overrides does not read on the claimed causal calendar tuple.

The passage from column 21 discusses types of graphs that can be generated, after Landvater's analysis is run:

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

Primary user display 502 is designed to permit the analyst to obtain additional information quickly and easily. Icons 506 on tool bar 508 provide a number of different graphs and spreadsheet displays, as does drop-down menu 510. The example in FIG. 22 shows a weekly forecast graph 512, a weekly replenishment graph 514, and a weekly replenishment spreadsheet 516. The weekly forecast graph shows sales from prior years, as well as the forecast. The analyst can zoom in on the graph 512 to display more detail where necessary.

This has nothing to do with the claimed causal calendar tuple.

As the passages cited by the Examiner do not teach the claimed causal calendar tuple of attributes for events impacting demand, Landvater does not anticipate claim 20 and the claim should be allowed.

Open-to-buy report

Our position has been that Landvater lacks an open to buy report. This term of art is invoked and applied on page 9 of the application:

Open-to-buy (OTB) management: In OTB management, future inventory levels are predicted based on current inventory, expected selling, and expected receipts; the future inventory levels are then compared to budgeted levels in order to determine whether the current sales and ordering plan will result in exceeding the inventory budget (typically at the department level or higher). Because the future rate of selling is critical to calculating what future inventory levels will be, the OTB system or OTB activity should find it is helpful to get the causal event information from the causal event calendar in order to make the most accurate determination of the future rate of selling for an good.

Similarly, this term of art is defined in multiple web-based references, such as http://retailindustry.about.com/od/abouttheretailindustry//bld_otb.htm, which explains, "What is Open-to-Buy? Definition: Open-to-Buy is the difference between planned purchases and stock already ordered; the dollar amount of merchandise that a buyer can order for a particular period." See also, <http://retailindustry.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.planfact.co.uk%2Fcontrol.htm>. Neither the term "open to buy" nor the concept as it is used in the art appear in Landvater. The financial planning paragraph, col. 20, lines 29-47, does not provide a written description of open to buy reporting that would anticipate claim 20. Therefore, the open to buy integrated reporting limitation is a further basis for allowing the claim.

The Examiner argues (OA 2-3 § 2) that "Landvater discloses predicting the inventory for the future based on expected future sales and the financial budgets set

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

forth by the financial planning system. See specifically column 20, lines 30-50, which discusses using a financial planning system to project future sales estimates and compare these estimates to budgets and financial data. The projected financial plan reveals the projected gross margins and the projected inventory investment and allows for the determination of replenishment shipments." We assume that the Examiner is relying on the passage, "Financial planning system 400 is typically used by financial planners to more accurately estimate what is likely to happen in the future and *compare this projection to various budgets* and other financial data. ... Using projected sales forecasts, financial planning system 400 calculates a projected inventory. This is also multiplied by the cost of the products, resulting in a *projected inventory investment* in dollars, also *useful in cash planning*."

To respond, we note that Landvater does not teach a cash planning report generated using a causal calendar of events impacting demand for forecasting. The claimed causal calendar is not used by Landvater to generate anything called an open-to-buy report or any report at all.

Applicant respectfully submits that claim 20 (Open to Buy Reports) should be allowable over Landvater.

Rejection Under 35 U.S.C. § 103(a) of Claim 39

The Examiner rejects **claim 39** under 35 U.S.C. § 103(a) as being unpatentable over Landvater (U.S. 6,609,101) in view of what is old and well-known in retail. Claim 39 differs from claim 20, in that it requires analysis programs for markdown management, instead of open-to-buy management.

The first element of claim 39 follows the wording of claim 20, so it should not be necessary to repeat the argument we made above, that Landvater does not include a causal calendar of events impacting demand that includes the claimed tuple. The argument above is incorporated here by reference.

Markdown Management

It has been our position that Landvater also lacks a markdown management report, which is not surprising given the absence of any mention of markdowns. This term of art is invoked and applied on page 9 of the application:

Markdown management: A markdown management system or markdown activity within a system typically determines the optimal timing and level of

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

markdowns of a seasonal or fashion program in order to sell the total purchased quantity by a predetermined "out date" while maximizing revenue.

In order for a markdown management system to perform, it needs to query the causal event calendar in order to determine what event occur between the date of the markdown analysis and the "out date" in order to calculate the expected selling. For example, an good that has no event planned before its "out date" might require a markdown in order to reach full sell-through based on the rate of selling to-date; however, that same good with the same selling to-date may not require a markdown if some other event – a visual promotion, perhaps – is planned to take effect between the date of analysis and the "out date." Because the future likely rate of selling is critical to calculating what markdowns and markdown levels will be required, the Markdown system or Markdown activity should find it is helpful to get the causal event information from the causal event calendar in order to make the most accurate determination of what markdowns are best.

The Examiner seems to understand that Landvater lacks markdown management, as none of the Examiner's discussion (prior OA 3-4) applies passages of Landvater to markdown management. Therefore, the markdown management integrated reporting limitation is a further basis for allowing the claim.

The Examiner argues (OA 9-10) that markdowns are old and well-known in retail, which is certainly true. The Examiner next argues that it would be obvious for promotions in Landvater to include markdowns, in order to efficiently and accurately determining inventory levels.

To respond, this argument is not enough to meet the limitation of using output from forecasting with a multi-purpose causal calendar to prepare reports including markdown management data, nor does it seem intended to address markdown management at all.

This argument does not meet the words of the claim, which call for "an additional analysis program in the set of analysis programs generating data reported in markdown management reports" that takes advantage of forecasting output generated using the multi-purpose causal calendar. In claim 39, markdowns relate both to the first element, which utilizes a calendar designed to track planned markdowns, and to the second element, which utilizes analytics to recommend a new plan of markdowns that are not yet on the causal calendar. The Examiner's argument only relates to the first element, not the second. This may be why the argument regarding claim 1 (OA 5) and the related response (OA 3-4) do not even suggest that Landvater teaches analysis

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

programs generating data reported in markdown management reports. The Examiner does not seem to find any markdown management in Landvater (nor do we).

Applicant respectfully submits that claim 39 should be allowable over Landvater.

Rejection Under 35 U.S.C. § 103(a) of Claim 58

The Examiner rejects **claim 58** under 35 U.S.C. § 103(a) as being unpatentable over Landvater (U.S. 6,609,101). Claim 58 differs from claim 20, in that it requires analysis programs for bottom-up planning, instead of open-to-buy management.

The first element of claim 58 follows the wording of claim 20, so it should not be necessary to repeat the argument we made above, that Landvater does not include a causal calendar of events impacting demand that includes the claimed tuple. The argument above is incorporated here by reference.

The Examiner argues (OA 4) that Landvater discusses bottom-up planning by providing sales, inventory and receipt information on a daily or weekly basis.

To respond, we note that Landvater does not teach using output generated by taking into account a causal calendar of events impacting demand for bottom-up planning purposes. The claimed causal calendar is not used by Landvater to generate any bottom-up plans.

Applicant respectfully submits that claim 58 should be allowable over Landvater.

Rejection Under 35 U.S.C. § 103(a) of Claim 1

The Examiner rejects **claim 1** under 35 U.S.C. § 103(a) as being unpatentable over Landvater (U.S. 6,609,101). Claim 1 shares the first element of claims 20, 39 and 58 and adds a second element that calls for two out of three of analysis programs for open-to-buy, markdown management and bottom-up planning.

The combination of first and second elements is not found in Landvater, as explained above. Landvater does not teach using output generated by taking into account a causal calendar of events impacting demand for any of the three types of analysis program: for open-to-buy, markdown or bottom-up planning reports. The claimed causal calendar is not used by Landvater to generate any open-to-buy, markdown or bottom-up planning reports.

Applicant respectfully submits that claim 1 should be allowable over Landvater.

Application No.: 09/760,377**Atty Docket: BLFR 1003-1****Rejection Under 35 U.S.C. § 102(e) of Dependent Claims 2-5, 21-24, 40-43 and 59-62**

Claims 2-5, 21-24, 40-43 and 59-62 include limitations that specify how good and event identifier attributes apply to individual or groups of goods and selling locations:

- a single good at a single selling location*
- a single good at a group of selling locations*
- a group of goods at a single selling location*
- a group of goods at a group of selling locations*

It has been our position that these variations on a causal calendar tuples, which include good and selling location identifier attributes, are not found in Landvater. Again, Landvater does not include the claimed causal event calendar of events impacting demand represented by the claimed tuple, so it is not surprising that variations on interpretation of group and selling location identifier attributes are lacking.

The Examiner argues, "Landvater discusses specifying in the system specifics of products at specific locations. See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 17, lines 35-57, column 19, lines 5-17, wherein goods are grouped and projected across the retailers while also considering events, such as promotions, displays, etc. at those locations." OA 3.

To respond, we need first to summarize the passages cited. To begin, the passage at col. 8, lines 5-25 discusses "creating a statistical forecast of projected sales for each product at each location." As grouping is not mentioned, we will not further address this passage.

The passage at col. 5, lines 1-5 discusses grouping selected products and treating them as a single product "for determining time-phased product sales forecasts". This summary passage is not accompanied by any explanatory text. Therefore, we look to the more detailed passages.

The three passages that suggest apply grouping apply it in a very limited sense to specification of delivery safety times, which provide a buffer against untimely delivery of goods used in a promotion. The passage at col. 11, lines 20-32 discusses categorizing products for specification of system parameters, particularly for override time periods. Col. 11, line 17-21. The passage at column 17, lines 35-57 discusses

Application No.: 09/760,377**Atty Docket: BLFR 1003-1**

categorizing products for assignment of an initial distribution safety time. Col. 17, lines 46-49. The passage at column 19, lines 5-17 discusses promotion safety time for certain categories of products, to override system-wide safety times. Thus, the passages cited apply grouping only for safety times, not for causal events impacting demand that are represented by the claimed tuples.

While we can understand the level of grouping that the Examiner sees in Landvater, it does not match the words of the claims. It does not apply to a calendar of causal events impacting demand that are represented by the claimed tuples. As the Examiner has rejected these claims under § 102, not under § 103, the fact that Landvater does not apply grouping in the manner claimed should be good reason for the Examiner to withdraw this ground of rejection.

Rejection Under 35 U.S.C. § 102(e) of Dependent Claims 6, 25, 44 and 63

Claims 6, 25, 44 and 63 include the limitation:

an impact estimate quantity ~~a factor~~ *corresponding to the impact of the event on sales*

The Examiner suggested using a term more specific than "factor" in these claims and we have amended them accordingly. We hope that the Examiner will give the amended wording "proper patentable weight." C.f., OA 3.

As amended, claims 6, 25, 44, 63 and 82 should be allowable over Landvater.

Rejection Under 35 U.S.C. § 102(e) of Dependent Claims 2-5, 21-24, 40-43 and 59-62

Claims 7-19, 26-38, 45-53, 64-72 and 83-95 should be allowable for at least the same reasons as the claims from which they depend.

Application No.: 09/760,377

Atty Docket: BLFR 1003-1

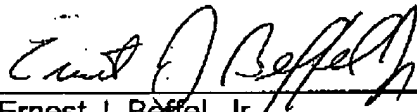
CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

If the Examiner would find some clarification or amendment to be helpful to the prosecution and allowance of this or any of the related applications that the Examiner is considering, the undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Respectfully submitted,

Dated: 13 February 2006


Ernest J. Beffel, Jr.
Registration No. 43,489

HAYNES BEFFEL & WOLFELD LLP
P.O. Box 366
Half Moon Bay, CA 94019
Telephone: (650) 712-0340
Facsimile: (650) 712-0263